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Business Associations—Fair Trade Laws

Jules Gordon

Fair Trade Laws

In 1935 the New York Legislature passed the Field-Crawford "Fair Trade Law"[36] which purported to create a cause of action for a manufacturer against a retailer who sells trade marked goods in intrastate commerce below the manufacturer's list price, so long as any retailer has contracted to maintain that list price. The Court of Appeals declared this act unconstitutional in 1936 on the grounds that absent emergencies the State cannot fix prices, and to delegate power to manufacturers to fix prices would be violative of due process.[37] However, shortly after, the United States Supreme Court in the *Old Dearborn* case[38] declared a similar Illinois statute[39] constitutional, holding that the aim of the statute is not to fix prices, but to protect the manufacturer's "property" in the good will attached to the trade-mark which he still owns. Almost immediately thereafter, the Field-Crawford Act was before the Court of Appeals again in the *Bourjois Sales v. Dorfman,*[40] and this time, on reliance on the *Old Dearborn* case, the act was declared constitutional.

As far as interstate commerce is concerned, the Sherman Act[41] had declared all price fixing illegal. Then the Miller-Tydings Amendment[42] declared that contracts prescribing minimum prices are not illegal as applied to interstate commerce where legal under state laws. *Schwegman Bros. v. Calvert Distillers Corp.,*[43] restricted the purview of this act to voluntary pricing contracts and has no non-signer enforcement features.

Finally, in 1952, the McGuire Act was enacted,[44] exempting from Federal Anti-Trust laws, fair trade agreements made pursuant to existing or future state laws, and permitting their enforcement against non-signers as well as signers who are engaged in interstate commerce.

In one appeal of three cases, *General Electric Co. v. Masters Inc., Lionel Corp. v. S. Klein on the Square, Inc.,* and *Raxor Corp. v. Goody,*[45] the Court of Appeals has now decided that under the

36. GENERAL BUSINESS LAW § 369-a *et seq.*, L. 1935, c. 976, re-enacted L. 1940, c. 195.
37. *Doubleday Doran & Co. v. R. H. Macy & Co.*, 269 N.Y. 272, 199, N.E. 409 (1936).
38. *Old Dearborn Distributing Co. v. Seagram Distillers Corp.*, 299 U. S. 183, (1936).
39. ILL. REV. STAT. 1935, C 140, § 8 *et seq.*
40. 273 N.Y. 167, 7 N.E. 2d 30 (1937). The statute was upheld against claims that it violated the New York State Constitution.
41. 26 STAT. 209 (1890), 15 U.S.C.A. § 1.
42. 50 STAT. 693 (1937), 15 U.S.C.A. § 1.
43. 341 U. S. 384 (1950).
44. 66 STAT. 632 (1952), 15 U. S. C. A. § 45.
45. 307 N.Y. 299, 120 N.E. 2d 802 (1954).

McGuire Act, manufacturers can constitutionally enjoin non signers from selling below list in interstate commerce.

Defendants argue that the McGuire Act attempts an unconstitutional delegation to the states of power over interstate commerce. The court answers this by bringing the McGuire Act within the language of the Supreme Court in *Southern Pacific Co. v. State of Arizona ex rel. Sullivan:*[46] "Congress has undoubtedly the power to redefine the distribution of power over interstate commerce. It may . . . permit the states to regulate the commerce in a manner which would otherwise not be permissible." In any event, the constitutionality of the McGuire Act was upheld by the U. S. Court of Appeals for the Fifth Circuit in *Schwegman Bros. v. Eli Lilly & Co.*[47]

The defendants' other principle attack is against the constitutionality of the Field-Crawford Act. The Court refuses to reconsider those issues decided by the *Old Dearborn* and *Bourjois Sales* cases.

III. Civil Practice

Jurisdiction of the Supreme Court

An action was brought in the Supreme Court against State officials asking for equitable relief in the form of the recission of a bid made by the plaintiffs, and an injunction forbidding the transfer of the bid check to the State's general fund, and commanding that the check or its proceeds be returned to the plaintiffs. The Court of Appeals affirmed the decision of the Appellate Division, which had reversed a finding for the plaintiffs by the trial court, on the ground that the Supreme Court lacked jurisdiction to entertain the case.[1]

Suits for the recovery of money paid to State officers in their official capacity, although nominally brought against the officers themselves are held to be actions against the state.[2] Actions for the recovery of money from the state must be brought in the Court of Claims.[3] The plaintiffs in the instant case argued that since the Court of Claims has no jurisdiction to grant strictly equitable relief,[4] and since no suit for the return of the deposit could be maintained until the bid was rescinded, they must neces-

46. 325 U. S. 761, 769 (1944).
47. 205 F. 2d 788 (5th Cir.), *cert. denied* 346 U. S. 865 (1953).

1. *Psaty v. Duryea,* 306 N. Y. 413, 118 N. E. 2d 584 (1954).
2. *Samuel Adler, Inc. v. Noyes,* 285 N. Y. 34, 32 N. E. 2d 781 (1941).
3. Court of Claims Act § 9.
4. *Gregory Ferend Co. v. State of New York,* 251 App. Div. 13, 295 N. Y. Supp. 715 (3d Dep't 1937), *leave to appeal denied* 282 N. Y. 808, 26 N. E. 2d 836 (1940).